

SUBJECT: Civil Process	NUMBER: 2-11.02
EFFECTIVE DATE:	REVIEW DATE:
NMMLEPSC STANDARDS: OPR.12.01, OPR.12.04	APPROVED: Sheriff

I. POLICY:

The sheriff's office is mandated by law with the service of legal process in support of the judicial function. This includes the service of all civil and criminal process either received from the courts, or from individuals whose legal interests are affected by the courts' decisions

II. RULES AND PROCEDURES

A. Service of civil process

Normally all civil process papers are to be served by the agency's civil division. If deputies are approached or contacted by dispatch to serve a civil process paper the person requesting the service will be directed to contact the sheriff's office civil clerk during regular business hours to process the civil papers for assignment to a civil deputy. The only exception to this would be domestic restraining orders. No other civil process papers will be served without going through the civil clerk unless authorized by the civil division commander.

Deputies will take all necessary action to attempt to serve a domestic restraining order. Domestic restraining orders require the person be personal served, it cannot be done through a third party. If a domestic restraining order is served by a field service deputy will complete an incident report and turn the return of service into the civil division.

B. Posting

1. The civil summons that cannot be served to a permanent resident who is 15 years of age or older at the residence will be posted (in the most visible portion of the premises; i.e. the front door of the premises) and mailed in accordance with NMSA Rule 6-205 H (1).

C. Civil Process Section

1. The purpose of civil process is to promptly serve and make timely return of all legal process received by the Valencia County Sheriff's Office. At times this may include legal process received from neighboring jurisdictions. The civil clerk will collect fees from plaintiffs in accordance with NMSA 4-41-16. Information listed below is

needed to process the civil papers will be recorded and maintained in the agency's records management program by the civil clerk.

- a) Date and time received
 - b) Type of legal process
 - c) Nature of document
 - d) Source of document
 - e) Name of plaintiff/complainant or name of defendant/respondent
 - f) Deputy assigned for service/name of server
 - g) Date of assignment
 - h) Method of service/reason for non-service
 - i) Date service due
 - j) Name of person for whom service was attempted
 - k) Name of person for whom process was served
 - l) Location/address of service or attempted service
 - m) Date and time of service or attempted
 - n) Court docket number
2. If this agency receives civil process which requires service in another jurisdiction, the individual presenting the process will be informed of the need for them to take the process to the appropriate law enforcement agency in that jurisdiction.

D. Property Seizure

- 1. All writs which require the seizure of real or personal property must be executed by a sworn law enforcement officer.
- 2. Two law enforcement officers will be assigned in the execution of any writ.
- 3. All property acquired through the civil process function will be properly accounted for in agency records.
- 4. All property and monies collected will be disposed of by the agency pursuant to legal authority.
- 5. Any property collected as a result of an execution or other lawful court order, will be secured in a storage unit or other facility which is controlled by the sheriff's office.

E. General Duties, Responsibilities and Supervision

- 1. Service of any civil process, where any state agency is named as the defendant, must be served on the head of the agency in addition to the Attorney General's Office in Santa Fe, New Mexico. The court document will not be accepted by this division for service. The individual will be instructed to deliver the document to the sheriff's office of Santa Fe County for service, see District Court Rule 1-004 (F) 3D; Magistrate Rule 2-202 C6; and Metropolitan Court Rule 3-202-D (3).

2. Deputies will not involve themselves and/or the agency with repossessioners and/or their agents unless specifically upon direction and authority by a court of record within this jurisdiction. Deputies will not make a determination as to lawful ownership of any goods, chattels and any cause absent orders by the court. It will be the duty of the deputy to instruct the parties involved to seek direction through the courts.
3. If the repossessioning agent has documents either issued or filed with the court, that individual must present those documents to the civil division before any determination or action is to be taken by the deputy. Deputies shall keep their supervisor(s) apprised for the purposes of review and direction in this regard.

F. Summons and Complaint

A summons is a notice from the court (magistrate or district) of a civil action. Attached to the summons is a copy of the complaint filed. This summons requires a response to the court within the stipulated time period. The time period begins from the date of service of the summons. Service can be effected through personal service, service of a permanent resident who is 15 years of age or older at the residence, or an authorized agent who can accept service for the defendant. There are many different types of summons, the general rule for service, however, would be as previously described unless there are special instructions from the issuing court. Failure to answer a summons will result in a default judgment against the defendant.

G. Summons For Notice of Trial on Petition for Writ of Restitution (Eviction)

A deputy serves the summons for notice of trial of restitution. This informs them of a specific court date. The notice for trial of restitution must be posted or served no less than seven (7) calendar days prior to the trial or hearing date. It will be the responsibility of the assigned deputy to ensure that the dates are adhered to.

H. Writ of Restitution (Eviction)

1. A removal of tenants from rental property by court order.
2. The actual physical eviction can only be effected by sworn law enforcement officers and an incident report must be completed upon an eviction.
3. Once the deputies arrive and service the restitution, the tenants are evicted from the property. The deputies may allow them 10 to 15 minutes to gather essential items. Following that, they must vacate the premises. Once the tenants are gone, the landlord must do the following:
 - a. Landlord must change locks on the premises to ensure security of the property once the deputies have left. The landlord should change the locks while the deputies are present.

- b. The landlord must inventory property left behind by the tenants.
 - c. Following the eviction, the landlord should have someone available during normal business hours to allow the ex-tenant to enter the premises or other storage facility to remove their personal property in one trip. Landlords do not furnish the new key to the ex-tenant(s).
- 4. In all the above instances, the landlord must abide by the Uniform Owner-Resident Relations Act, which describes the proper procedures to be used to inform tenants of the landlord's intent to dispose of the property.
 - 5. If the ex-tenant forcibly enters the premises following the eviction, the incident may be considered a criminal act and the proper law enforcement agency should be contacted by the landlord.

I. Evictions/Mobile Homes

- 1. These are similar to the previous evictions. However, in many of these cases the mobile home is owned by the tenant, but they have fallen behind in payment on the trailer space.
- 2. Every available effort will be made to locate the owner(s)/resident(s) of the mobile home for the purpose of intent to file, or not to file (claim) a Homestead Exemption, as provided on Civil Form 4-803.
- 3. The notice of judgment shall state that at a specified time, not less than 48 hours from entry of judgment, the sheriff's office will return to serve a Writ of Restitution and superintend the peaceful and orderly removal of the mobile home under that order of court. The notice of judgment shall also advise the mobile home owner to prepare the mobile home for removal from the premises by removing the skirting, disconnecting utilities, attaching tires and otherwise making the mobile home safe and ready for highway travel.
- 4. Should the mobile home owner fail to have the mobile home safe and ready for physical removal from the premises or should inclement weather or other unforeseen problems occur at the time specified in the notice of judgment, the landlord and the sheriff's office may by written agreement extend the time for the execution of the Writ of Restitution to allow time for the landlord to arrange to have the necessary work done or to permit the sheriff's office execution of the Writ of Restitution at the time when weather or other conditions will make removal less hazardous to the mobile home.
- 5. If the mobile home is not removed from the landlord's land on behalf of the mobile home owner within the time permitted by the Writ of Restitution, the landlord and the sheriff's office shall have the right to take possession of the mobile home for the purposes of removal and storage. Processing in this case will proceed normally, as in the service of any Writ of Restitution.

6. If the mobile home owner is present, they will be served with the writ and evicted from the home. The landlord must change locks on the home while the deputies are present.
7. If the mobile home owner is not present when the writ is served, the deputies will again proceed as in a normal eviction. The notice will be posted and the locks will be changed. At this point the landlord must, while deputies are present, complete an inventory of the mobile home contents. In either instance, if the landlord is prepared and has made the proper arrangements to move the mobile home, they may move the mobile home to a storage facility.
8. The liability of the landlord and the sheriff's office in such event shall be limited to gross negligence or willful and wanton disregard of the property rights of the mobile home owner. The responsibility to prevent freezing and to prevent wind and weather damage to the mobile home lies exclusively with those persons who have property interest in the mobile home.
9. Utility charges, rents and reasonable removal and storage charges may be paid by any party in interest. Those charges shall constitute a lien which will run with the mobile home and whoever ultimately claims the mobile home will owe that sum to the person who paid it.
10. The Writ of Execution/Restitution will not be closed out/completed until every effort is made to locate the owner/resident.
11. At all stages of the investigation, personnel will completely document all of the information received on the work sheet as well as on the sheriff's office Return of Service. Personnel will keep their immediate supervisor(s) informed of all stages of the investigation. An incident report will be completed upon completion of the service, documenting any and all action taken to accomplish the service.
12. The sheriff's office NEVER seizes moves and/or stores a mobile home. This is completely the responsibility of the plaintiff.

J. Writ of Replevin

1. A Writ of Replevin is a court order to repossess goods or chattels that the defendant wrongfully detains from the plaintiff.
2. A writ of replevin must be returned to within 60 days from the date of delivery to the sheriff's office.
3. When large or multiple items are involved, the deputies will contact plaintiff and/or their attorney to take custody of the items when located. This is, in all actuality, a

request. State statutes direct the sheriff's office to seize and take responsibility for property seized pursuant to court orders.

4. On replevins involving vehicles, an incident report, tow sheet, with an inventory, will be filled out when the plaintiff cannot be reached or the attorney cannot be reached.
5. A minimum of two deputies will work a replevin.
6. When a mobile home is subject to a Writ of Replevin, the plaintiff should be contacted and notified of the time the replevin is to be executed. Their representative should make arrangements to be present at the time of execution to do an inspection and take possession of the property.
7. Anytime property is seized the deputy will complete an incident report documenting the actions taken.

K. Writ of Execution

1. An order from a court ordering the sheriff's office to collect money or levy (confiscate) on property to satisfy a judgment. Magistrate court writs are for amounts of \$10,000 or less. District court judgments and subsequent Writs of Execution are for amounts over \$10,000.
2. The writ can be served to the person named or someone authorized to accept the court document.
3. The writ orders the sheriff's office, or a full time deputy sheriff to levy on the personal property of the defendant. This is on magistrate court judgments. The district court judgment reads: "The Sheriff is commanded to levy upon the goods, chattels, lands, and effects of the defendant."
4. The difference between magistrate and district writs is that the magistrate writ orders the deputy to levy on the personal property of the defendant. District writs order the deputy to levy not only on the personal property, but also land can be levied against. Each judgment debtor is allowed certain exemptions. Incorporated businesses are not allowed exemptions. However, there are certain items that cannot be levied against. A business such as a car dealer, or any business that has a large inventory of sale items, usually falls under the Uniform Business Code. The inventory is under lien to the manufacturer, and does not belong to the business. Vehicles on consignment would also be exempt.
5. If the judgment names the business but the business is not incorporated, the judgment would have to also name the business as a corporation to be valid.
6. When a judgment is obtained from the court, the plaintiff will get a transcript of judgment and file it with the county clerk. If any "real" property (lands, home) of the

defendant is sold, the judgment will be paid. If the deputy receives a Writ of Execution and finds the house is for sale, he will obtain the information concerning the realty company and then return the document to the plaintiff.

7. Prior to the services of a Writ of Execution a deputy should be assured the judgment debtor was served a Notice of Right to Claim Exemptions (Execution), Civil Form 4-808A, and three copies of Claim of Exemptions on Executions, Civil Form 4-803, with the understanding the debtor had ten days to file listed exemptions with the court file for a hearing on the exemptions.
8. When the deputy serves a Writ of Execution, the defendant may say they have filed bankruptcy. If this is the case, the deputy will obtain the bankruptcy case number from the defendant, his attorney, or the bankruptcy court. This may also be the case with an Internal Revenue Service or state tax lien. In the case of an IRS or tax lien, the defendant has to provide the documentation to prove the lien exists. Banks may have liens against the inventory, accounts receivable, and fixtures of the business. Again, documentation would have to be provided by the defendant to stop or stay the execution. The bankruptcy number must be affixed to the work sheet and the return of service.
9. Another way to stop the Writ of Execution is to appeal. The defendant has fifteen days after the entry of the judgment to file an appeal. The appeal is filed with the magistrate court. The magistrate court clerk will docket the appeal with the district court. The action that stays the execution is the filing of a supersedeas bond with the clerk of the magistrate court. The appeal process for a district court judgment would be the same. The judge may waive the bond in either case if so desired; however, documentation from the court must accompany the writ.
10. Anytime property is seized the deputy will complete an incident report documenting the actions taken.

K. Writ of Garnishment

1. A writ served on an employer which requires them to reply to the court regarding the status of a person who may be employed by them. If the person is employed there, the employer will be required to withhold a portion of the person's wages to satisfy a judgment.
2. A garnishment must be served to an executive officer, payroll officer, or someone authorized to accept service for the employer.
3. A Writ of Garnishment is in effect, a summons for the employer. It must be answered even when the defendant named is not known or is no longer an employee.
4. The person being garnished can be served the Writ of Garnishment. Example: if the garnishee is the boss.

5. Failure of the employer to reply within the stipulated time limit will result in the court issuing a Writ of Execution against them for the full amount of the original judgment.

L. Writ of Attachment

1. A Writ of Attachment is an order commanding the sheriff's office to seize from the defendant his/her lands, tenements, goods, monies, effects, credits, and all other interests in specific property, this is to hold the property until a decision is made by the court. The Writ of Attachment prevents the defendant from disposing of the property until a hearing can be held. These writs will be personal service only. Anytime property is seized the deputy will complete an incident report documenting the actions taken.

M. Subpoenas

An order from the court that requires a person to appear for a specific matter at a definite time and place.

N. Subpoena Duces Tecum

1. A subpoena which directs the person to appear, as well as bring records, papers, and other documents which relate to the matter at hand.
2. Subpoenas must be personal service only. An attorney can accept service for his client.
3. An agent authorized to accept service may be designated in some cases. For example, doctors may designate their secretaries to accept service for them. Another example would be the Office of Medical Examiner/Investigators. The secretary accepts service for all medical investigators. The deputy must print the authorized individuals name and title accepting service for the recipient on the work sheet and the return of service.
4. There are subpoenas, specifically those from the state labor commissioner, which must be served at least ten days prior to the court appearance date.

O. Reciprocal Subpoena and Motion for Child Support

This is a subpoena from another state to an individual for a hearing on child support. It is a subpoena and should be personally served.

P. Writ of Assistance

A court issued writ which orders the sheriff's office to take a specific action on behalf of the plaintiff. These orders normally involve the recovery of property or the restoration of premises to the plaintiff, and allow the sheriff's office to take whatever action necessary

to obtain entry into the property in question. Great care should be taken in the execution of these orders, and the following steps taken:

1. All property removed or disbursed to the various parties named in the writ must be recorded on a divisional inventory form (VCSO302). Details should be included on who took possession of the property, and where it was taken. This will be documented in an incident report.
2. Normally only those persons who are named in the writ should be allowed access to the home/property. If other people are present to assist either party, their names must be recorded on the work sheet. During the execution of the writ none of the parties, or other people present who are helping them, should be left unsupervised and allowed to remove ANY property/items from the residence unless directed by agency personnel.
3. Prior to any property being removed, a video tape record of the property/home will be made. These tapes will be stored in the court services division commanders office under safe keeping, where they will be accessible in case of any future litigation.
4. Court Services Supervisor will be responsible for data collection of division inventory forms and record keeping until completion of litigation.

Q. Writ of Execution and Forcible Entry and Detainer

Similar to the Writ of Assistance, it orders the sheriff's office to restore property to the plaintiff, and gives the sheriff's office authority to enter premises to execute the order. Procedures as stated above for writs of assistance will be followed if any property is affected by the writ.

R. Order Sealing the Premises

1. This type of order originated with the state taxation and revenue office. The business being served would owe back taxes. The deputies' duties, in this instance, would be to accompany the state taxation and revenue officers to the place of business.
2. The order is served to the owner and the business is closed. Everyone is sent home and a copy of the order is posted on the front door of the business. At this point, the state officers take charge of the premises and the locks are changed.

S. Warrant of Lien or Levy

1. A warrant which originates at the state taxation and revenue office and is filed with the county clerk. This authorizes the state to levy on a delinquent taxpayer's property, and requires the assistance of the sheriff's office.

2. The authority to levy on delinquent taxpayer's property is that of the director of taxation (and does not need a judge's signature) per NMSA 7-1-31 (1990 replacement).

T. Domestic violence restraining order

1. An order directing the respondent to stay away from the petitioner pending the outcome of a court hearing regarding an incident of domestic violence.
 - a) These orders are signed by either an appointed special commissioner or a district court Judge. These orders are explicit and instruct/order the deputy what his duties will be in each specific case.
2. In some instances these orders will require the deputies serving them to evict the respondent (defendant) from the home where the petitioner lives. In that event these orders should always be served by two deputies.
3. Remember that these are court orders, and should be carried out exactly as specified in the order. At times the petitioner, or plaintiff, may request that some portion of the order not be carried out. Deputies must enforce ALL of the provisions in the order, regardless of the wishes of the plaintiff/petitioner.
4. These orders require personal service, and the serving
 - a. Deputies should make sure that the respondent understands the order, and is aware of the hearing date.

U. Video Taping Civil Procedures

1. Normally all Writs of Assistance will be videotaped, however, the taping of the execution of other writs will be at the discretion of the court services lieutenant.
2. Before starting taping, the date and time will be set internally so that it will be recorded as the tape is made. The tape should begin with a recording of the front of the business/residence which would indicate the address. At the same time the deputy making the tape should audibly announce the date, time, address, and case number, so that it will be recorded on the video tape. This will also be done at the conclusion of the tape.
3. An offense/incident report will be completed for each tape recording of a writ. The report will include all information concerning the execution of the writ, and where the video tape is being stored.
4. Video tapes will be submitted to the agency's property and evidence room in accordance with agency policy. Videos will be submitted to the property room in a timely manner.

5. Deputies who use the video camera will test the camera prior to beginning the actual taping. This test will be monitored by supervisory personnel if available. Any malfunction will be immediately reported. It will be the responsibility of supervisory personnel to investigate the cause of the malfunction, and to take any steps necessary to rectify the problem. Requests for repair or parts must be carried out through the normal procedures for obtaining purchase orders.
6. Video tapes of the service of writs will be stored for a period of two (2) years, or until the possibility of litigation no longer exists for the particular incident.
7. Two deputies will be present during the execution of any writ where a video recording is made. Only one case/service of writ may be recorded per tape.